

07 CV 5732

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
EMPIRE BONDING AGENCY, INC.,

*Plaintiffs,*

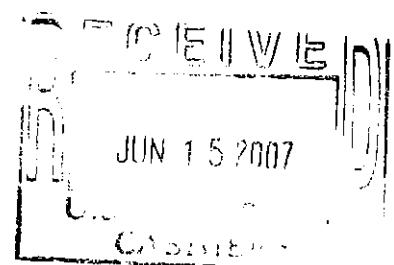
v.

JOE MASTRAPA, BAIL YES, INC., ITS  
FOR ALL MEDIA GROUP, and DOES 1 -  
10,

*Defendants.*

Civil Action No.

ECF FILED  
JUDGE DANIELS



**COMPLAINT FOR TRADEMARK INFRINGEMENT, UNFAIR  
COMPETITION AND CYBERSQUATTING**

Plaintiff Empire Bonding Agency, Inc. by and through its undersigned attorneys, for its Complaint against the defendants, alleges:

**THE PARTIES**

1. Plaintiff Empire Bonding Agency, Inc. ("Empire") is corporation duly organized and existing under the laws of New York, located and doing business at 62 Nichols Court, Hempstead, New York 11550.
2. Upon information and belief, Defendant Joe Mastrapa ("Mastrapa") is an individual with an address of Bail Yes, Inc., 2299 Southwest 27<sup>th</sup> Avenue, Miami, Florida 33145.
3. Upon information and belief, Defendant Bail Yes, Inc. ("Bail Yes") is a corporation duly organized and existing under the laws of Florida with an address of 2299 Southwest 27<sup>th</sup> Avenue, Miami, Florida 33145. Upon information and belief, Mastrapa is the principal of Bail Yes, a service that refers clients to bail bonding

agencies in the clients' locale.

4. Upon information and belief, Defendant Its for All Media Group is a search engine marketing, website design and site optimization company located and doing business at 6550 SW 30 Street, Miami, Florida 33155.

5. The true names and capacities, whether individual, corporate or otherwise, of the defendants named herein as Does 1 through 10 are presently unknown to Empire, who therefore sues said defendants by such fictitious names. Empire will seek to amend this Complaint to allege the true names and capacities of said defendants when it has ascertained such information. Empire is informed and believes that each defendant named herein as Does 1 through 10 has participated in some or all of the acts or conduct alleged in this Complaint, or otherwise orchestrated, supervised or were aware of, or should have been aware of, the infringing conduct as herein alleged, and is therefore liable to Empire by reason thereof.

#### JURISDICTION AND VENUE

6. This complaint alleges causes of action for trademark infringement and cybersquatting pursuant to the Lanham Act, 15 U.S.C. § 1051, et seq., unfair competition arising under the laws of New York State, and violations of Section 349 of the New York General Business Law.

7. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338 with respect to the claims arising under federal law, and supplemental jurisdiction pursuant to 28 U.S.C. §§ 1338 and 1367 with respect to the claims arising under the laws of the State of New York.

8. This Court has personal jurisdiction over defendants, and venue is

proper in this district pursuant to 28 U.S.C. § 1391 (b) and (c) because such defendants are doing business within this State and judicial district, transact business within this State and judicial district, derive substantial revenue from intra-state and inter-state commerce and have committed tortious acts within this State and judicial district and without this State and judicial district having injurious consequences within this State and judicial district.

#### **FACTS COMMON TO ALL COUNTS**

9. Empire and its affiliated companies are a family owned bail bonding agency that has been operation since 1999 and have been duly licensed by the New York State Insurance Department. Empire and its affiliated companies have been successful, and currently have locations in Queens, Staten Island, Brooklyn, Nassau and Suffolk counties.

10. To promote its bail bonding services, Empire and its affiliated companies have adopted the service marks and trade names EMPIRE BAIL BONDS and EMPIRE BAIL BOND AGENCY (collectively the "EMPIRE marks"). Those marks have been in continuous use by Empire and its affiliated companies since at least as early as 1999, and have appeared on Empire's website, letterhead and other promotional materials.

11. As a result of its promotional activities, Empire and its affiliated companies and the EMPIRE marks have become well-known in the relevant trade and consuming public.

#### **Defendants and their Infringing Activities**

12. Upon information and belief, Its For All Media Group, on behalf of Mastrapa and Bail Yes Bonding Agency, registered the domain name <empirebailbonds.com> on September 19, 2005.

13. Upon information and belief, Its For All Media Group, on behalf of Mastrapa and Bail Yes Bonding Agency, registered the domain name <empirebailbonding.com> on May 16, 2003.

14. Upon information and belief, Its For All Media Group, on behalf of Mastrapa and Bail Yes Bonding Agency, registered the domain name <empirestatebailbonds.com> on March 24, 2006.

15. Upon information and belief, after the registration of <empirebailbonds.com>, <empirebailbonding.com> and <empirestatebailbonds.com>, the domain names were associated with websites that indicated that the operator of the websites offered bail bonding services in New York State, in competition with the services offered by Empire. A printout of the website previously associated with <empirebailbonds.com> is attached as Exhibit A. A printout of the website currently associated with <empirebailbonding.com> is attached as Exhibit B, and a printout of the website currently associated with <empirestatebailbonds.com> is attached as Exhibit C. As can be seen, these websites feature the terms "Empire Bail Bond", "Empire Bail Bonding", "Empire Bail Bonds", "Empire Bail Bonds Company" and/or "Empire State Bail Bonds Company". Additionally, all of the websites feature the same toll-free number: 1-800-224-5937.

16. Upon information and belief, Its For All Media Group, on behalf of Mastrapa and Bail Yes Bonding Agency, designed the website that was associated with

<empirebailbonds.com>.

17. Through the websites at <empirebailbonds.com>, <empirebailbonding.com> and <empirestatebailbonds.com>, or through the phone number 1-800-224-5937 advertised on those websites, users looking for bail bonding services in New York State have been and are directed to bail bond agencies including, for example, AAA Discount Bail Bonds.

18. Upon information and belief, Mastrapa and/or Bail Yes refer callers to the phone number 1-800-224-5937 seeking bail bonding services in New York to AAA Discount Bail Bonds, and AAA Discount Bail Bonds pays Mastrapa and/or Bail Yes a fee for such referrals.

19. Upon information and belief, as a result of defendants' use of the domain names <empirebailbonds.com>, <empirebailbonding.com> and <empirestatebailbonds.com> and the terms "Empire Bail Bond", "Empire Bail Bonding", "Empire Bail Bonds", "Empire Bail Bonds Company" and/or "Empire State Bail Bonds Company", internet users searching for bail bonding services in New York State through an internet search engine such as Google or Yahoo! have been diverted to the website at <empirebailbonds.com> and the affiliated companies to which that website refers customers.

20. On April 16, 2007 Empire, through its counsel, sent defendant Mastrapa a notice letter regarding his use of the EMPIRE marks and the <empirebailbonds.com> domain name. Mastrapa did not respond to that notice letter.

21. On April 24, 2007, Empire's counsel visited the website at <empirebailbonds.com> and discovered that the website had been taken down and

replaced with a website stating "THIS SITE IS TEMPORARILY DOWN FOR BAIL BOND SERVICE IN FLORIDA CALL 1-800-224-5937". A printout of this website is attached as Exhibit D.

**COUNT I  
[TRADEMARK INFRINGEMENT]**

22. Plaintiff repeats and realleges the allegations of paragraphs 1 - 21, as if set forth fully herein.

23. Plaintiff and its affiliated companies have never authorized defendants to use the EMPIRE marks or any marks similar to the EMPIRE marks. Nevertheless, defendants have used the terms "Empire Bail Bond", "Empire Bail Bonding", "Empire Bail Bonds", "Empire Bail Bonds Company" and/or "Empire State Bail Bonds Company" in connection with their provision of bail bonding services, the same services offered by Empire under its EMPIRE marks.

24. Upon information and belief, defendants' acts have been done willfully and intentionally, with full knowledge of plaintiff's trademark rights.

25. Empire has given defendants due notice of plaintiff's rights, and on information and belief, defendants have failed to cease their infringing acts. Defendants' continuation of their infringing acts have and will cause plaintiff irreparable harm and injury.

26. Defendants have improperly promoted their services using the domain names <empirebailbonds.com>, <empirebailbonding.com> and <empirestatebailbonds.com> and the terms "Empire Bail Bond", "Empire Bail Bonding", "Empire Bail Bonds", "Empire Bail Bonds Company" and/or "Empire State Bail Bonds

Company" with the intent to cause confusion and mistake, to deceive and mislead the purchasing public and to improperly appropriate the valuable trademark rights of plaintiff.

27. The acts of the defendants described herein are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of defendants with plaintiff, or as to the origin, sponsorship, or approval of defendants' goods, services, or commercial activities in violation of Section 43 (a) of the Lanham Act, 15 U.S.C. § 1125 (a).

28. Plaintiff has no adequate remedy at law and is suffering irreparable harm and damages as a result of the wrongful acts of defendant in an amount thus far not determined.

29. Defendants have been unjustly enriched and plaintiff is entitled to an accounting of the profits of the defendants.

**COUNT II**  
**[CYBERSQUATTING]**

30. Plaintiff repeats and realleges the allegations of paragraphs 1 - 29, as if set forth fully herein.

31. Plaintiff's EMPIRE marks are distinctive, and are identical or confusingly similar to the domain names <empirebailbonds.com>, <empirebailbonding.com> and <empirestatebailbonds.com>. Indeed, the domain name <empirebailbonds.com> incorporates Empire's EMPIRE BAIL BONDS mark in its entirety.

32. The panel in Spencer Douglas, MGA v. Bail Yes Bonding, WIPO Case No. D2004-0261 (June 1, 2004) found that Mastrapa, or an entity under his control, had engaged in the abusive registration of a domain name under the Uniform Domain Name Dispute Resolution Policy by registering a domain name corresponding to the trademark of a competitor located in California.

33. Upon information and belief, the domain names were registered with a bad faith intent to profit. In particular, and upon information and belief, the domain names were registered to divert consumers from Empire's online location to the site at <empirebailbonds.com>, <empirebailbonding.com> and/or <empirestatebailbonds.com> for the commercial gain of defendants.

34. Plaintiff has no adequate remedy at law and is suffering irreparable harm and damages as a result of the wrongful acts of defendant in an amount thus far not determined.

35. Defendants have been unjustly enriched and plaintiff is entitled to an accounting of the profits of the defendants.

**COUNT III**  
**[COMMON LAW UNFAIR COMPETITION]**

36. Plaintiff repeats and realleges the allegations of paragraphs 1 - 35 hereof as if fully set forth herein.

37. This cause of action arises under the New York common law of unfair competition.

38. Defendants have engaged in a course of unfair competition by using

the domain names <empirebailbonds.com>, <empirebailbonding.com> and <empirestatebailbonds.com> and the terms "Empire Bail Bond", "Empire Bail Bonding", "Empire Bail Bonds", "Empire Bail Bonds Company" and/or "Empire State Bail Bonds Company" to hold themselves out as associated with Empire in contravention of plaintiff's rights.

39. Upon information and belief, the acts alleged herein are a specifically oriented predatory business practice undertaken by defendants, the dominant purpose and effect of which is to pass off and palm off their bail bonding services as originating with plaintiff and to confuse clients as to the source or origin of such services, in violation of the common law of New York.

40. Defendants' foregoing activities have damaged plaintiff in an amount as yet unknown, but the damage to plaintiffs and their reputation, if continued, is believed to be in excess of \$500,000.

41. By reason of the acts of defendants as alleged herein, plaintiff has, and will, suffer irreparable damage to their reputation and a loss of sales and profits which plaintiffs would have made but for said acts of the defendants.

42. Defendants have been unjustly enriched and plaintiff is entitled to an accounting of the profits of defendants.

**COUNT IV**  
**[VIOLATION OF SECTION 349 OF THE NEW YORK GENERAL BUSINESS LAW]**

43. Plaintiff repeats and realleges the allegations of paragraphs 1 - 42 hereof as if fully set forth herein.

44. This cause of action arises under Section 349 of the New York General Business Law.

45. Defendants without permission, willfully, and with the intention of benefitting from the reputation and goodwill of plaintiff, are using the domain names <empirebailbonds.com>, <empirebailbonding.com> and <empirestatebailbonds.com> and the terms "Empire Bail Bond", "Empire Bail Bonding", "Empire Bail Bonds", "Empire Bail Bonds Company" and/or "Empire State Bail Bonds Company" in contravention of plaintiff's rights in the EMPIRE marks.

46. Upon information and belief, the acts alleged herein are a deceptive business practice undertaken by defendants, the dominant purpose and effect of which is to pass off and palm off their bail bonding services as originating with plaintiff and to confuse buyers as to the source or origin of such services, in violation of the laws of New York.

47. Customers, prospective customers and the trade have been and are likely to be confused, deceived and mislead by defendants' actions and have purchased and are likely to purchase services from defendants as a result thereof.

48. The conduct of the defendants violates Section 349 of the New York General Business Law.

49. Defendants' foregoing activities have damaged plaintiffs in an amount

as yet unknown and defendants' activities will damage plaintiffs in a manner wherein plaintiffs have no adequate remedy at law, and the acts of defendants, if continued, will damage plaintiffs and their reputation, in an amount believed to be in excess of \$500,000.

50. By reason of the acts of defendants as alleged herein, plaintiffs have, and will, suffer irreparable damage to their reputation and a loss of sales and profits which plaintiffs would have made but for said acts of the defendants.

51. Defendants have been unjustly enriched and plaintiffs are entitled to an accounting of the profits of defendants.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff demands judgment against defendants as follows:

A. Preliminarily and permanently enjoining defendants and their officers, agents, servants, employees, attorneys and those persons, firms or corporations, acting in concert and participation with them from using the domain names <empirebailbonds.com>, <empirebailbonding.com> and <empirestatebailbonds.com> and the terms "Empire Bail Bond", "Empire Bail Bonding", "Empire Bail Bonds", "Empire Bail Bonds Company" and/or "Empire State Bail Bonds Company" in connection with any bail bonding service, or from in any other way becoming involved with bail bonding services using the term "Empire" or any other colorable imitation of plaintiff's EMPIRE marks, including the registration and use of any domain names that include the term "Empire";

B. Finding that defendants have infringed plaintiff's rights in the EMPIRE marks and have committed acts of unfair competition and false designation of origin.

C. Directing defendants to transfer to plaintiff any and all domain name registrations that include the word "empire," including but not limited to the <empirebailbonds.com>, <empirebailbonding.com> and <empirestatebailbonds.com> domain name registrations;

D. Directing an accounting by defendants to plaintiff of any profit gained from their use of the domain names <empirebailbonds.com>, <empirebailbonding.com> and <empirestatebailbonds.com> and the terms "Empire Bail Bond", "Empire Bail Bonding", "Empire Bail Bonds", "Empire Bail Bonds Company" and/or "Empire State Bail Bonds Company" or any other colorable imitation of plaintiff's EMPIRE marks;

E. Awarding damages to plaintiff, including damages for injury to plaintiff's EMPIRE marks, business reputation and goodwill, and all other damages arising out of defendants' acts of trade name infringement and unfair competition in an amount to be determined, but if defendants' activities are continued without abatement, in an amount of at least \$5000,000;

F. Awarding plaintiff statutory damages; and

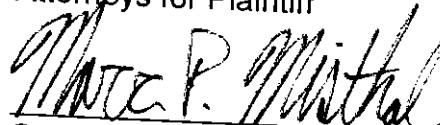
G. Awarding three times the amount of plaintiff's damages or defendants' profits, whichever is greater; and

H. Awarding such other and further relief as the Court may deem just and proper.

GOTTLIEB, RACKMAN & REISMAN, P.C.

Attorneys for Plaintiff

By:

  
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(212) 684-3900

Dated: New York, New York  
June 15, 2007

**EXHIBIT A**

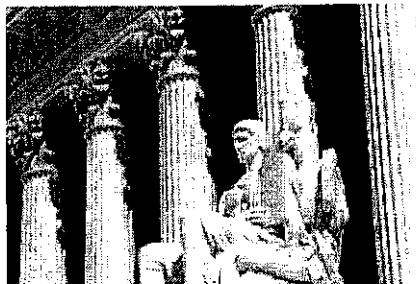
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## Bail: Getting Out of Jail

A person's first thought upon landing in jail is often how to get out -- and fast. The usual way to do this is to "post bail." Bail is cash or a cash equivalent that an arrested person gives to a court to ensure that he will appear in court when ordered to do so. If the defendant appears in court at the proper time, the court refunds the bail. But if the defendant doesn't show up, the court keeps the bail and issues a warrant for the defendant's arrest.

## How Bail Is Set

Judges are responsible for setting bail. Because many people want to get out of jail immediately (instead of waiting up to three days to see a judge), most jails have standard bail schedules that specify bail amounts for common crimes this is true in California and Florida. An arrested person can get out of jail quickly by paying the amount set forth in the bail schedule.

Note: in New York State bail is set only at the arraignment. As an example; If you are arrested in any of the New York Boros, Brooklyn, Bronx, Queens, Manhattan, Long Island, Hempstead or Nassau and Suffolk counties you will not be issued a bail until you see the judge typically 24-48 hours after being arrested. The actual posting of bail and release can take an additional 24-48 hours.

The Eighth Amendment to the U. S. Constitution requires that bail not be excessive. This means that bail should not be used to raise money for the government or to punish a person for being suspected of committing a crime. Remember: The purpose of bail is to give an arrested person his/her freedom until he/she is convicted of a crime, and the amount of bail must be no more than is reasonably necessary to insure the appearance of the defendant at all court proceedings.

If a person can't afford the amount of bail on the bail schedule, he or she can ask a judge to lower it. Depending on the state, this request must be made either in a special bail setting hearing or when the person appears in court for the first time (usually called the arraignment).

## Paying Bail

Bail can take any of the following forms:

- cash for the full amount of the bail
- property worth the full amount of the bail (requires a court to issue an order)
- a bail bond (a guaranteed payment of the full bail amount), or
- a waiver of payment on the condition that the defendant appear in court at the required time (commonly called "release on one's own recognizance" ROR).

A bail bond issued by a bail bondsman is like a check held in reserve: It represents the person's promise that he or she will appear in court when required to. The bail bond is purchased by payment of a nonrefundable premium (usually about 10% of the face amount of the bond).

## Getting Out of Jail Free

Sometimes people are released "on their own recognizance," or "O.R." A defendant released O.R. must simply sign a promise to show up in court. He doesn't have to post bail.

A defendant commonly requests release on his own recognizance at his first court appearance. If the judge denies the request, he then asks for low bail.

In general, defendants who are released O.R. have strong ties to a community, making them unlikely to flee. Factors that may convince a judge to grant an O.R. release include the following:

- The defendant has family members (most likely parents, a spouse or children) living in the community.
- The defendant has resided in the community for many years.
- The defendant has a job.
- The defendant has little or no past criminal record, or any previous criminal problems were minor and occurred many years earlier.
- The defendant has been charged with previous crimes and has always appeared as required.
- Most judges will have partially made up their mind to set or deny you bail even before you step up to the podium. This is because of what is written in your pre-trial services report. It is important then to be aware that after you are booked at the jail a court official usually a social case worker will interview you and ask you specific questions about your past criminal history, your education, your employment, citizenship status, family ties, property you own etc. This interviewers opinion is important to the judge, a negative report could all but kill any chances of you receiving bail. So be polite and answer the questions truthfully is your best bet.

For most people, being arrested is a very troubling and embarrassing experience. You, your relatives, and your loved ones can be overwhelmed with a sense of being lost in the judicial systems legal jargon . We understand. We can help you through it. Call us toll free 24 hours a day.

### Court Locations

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The law does not automatically guarantee you the right to be released on bail. If the judge decides that the nature of your crime or other factors make you a danger to the community (the public), the judge is likely to set a high bail amount or, in some states, deny bail outright. You will then have to remain in jail until a judge or jury decides the case.

The judge also will consider whether you are likely to flee if the court releases you on bail. Points in your favor include strong family ties in the area, if you are a longtime local resident and your current employment status. The judge also will consider any negative information that appears about you in a pretrial release report.

If the judge decides that bail is appropriate, the issue then becomes the amount of bail money that you will have to post for your release. Your bail may not be excessive (unreasonably high). However, there are no specific guidelines about what the amount of bail should be. The prosecutor could possibly request to have no bail set. Your attorney is permitted to make a request to the judge to reduce the bail. The term for that is releasing you on your own recognizance (often abbreviated "O.R." or "R.O.R."). This means you will not have to post any bail money. However, you will have made a binding promise to return to court on a date specified by the judge.

If the court grants you O.R. status or releases you on bail, you must reappear in court as agreed. If you do not appear, the judge could revoke your bail or O.R. status. The judge also could issue a bench warrant for your arrest. The police will find you, take you into custody, and place you in jail.

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**EXHIBIT C**



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